

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.**

CRIMINAL APPEAL NO. 267 OF 2002.

Abdul Samad Mohd. Kasim Shaikh]
aged 63 years, Occ : Service]
Residing at Gaffar Kadiya Chawl,]
Nr.Taiba Masjid, Shivaji Nagar,]
Rabodi-II Thane] Appellant
(At present in Jail, Custody at] (Original
Yerwada Central Prison at Pune)] Accused)
versus.

The State of Maharashtra : Respondent.

Mr.Ganesh Gole for Appellant - Original accused.
Mr.A.M.Shringarpure, APP for the State.

CORAM : D.G.DESHPANDE, J.

DATED : 23rd August 2004.

JUDGMENT

1. Heard. The appellant has filed this
appeal against his conviction under Section 376

of the Indian Penal Code by which he was sentenced to suffer R.I. for seven years. He is in custody. His bail application was rejected on 29.4.2002 and the appeal was expedited.

2. The case against the accused is that he was holding the prestigious office of Imam as a religious instructor at Noor Masjid in Thane. He committed rape between May and September 1999 on his own family student Sameera. And after discontinuing her regular schooling, chose to take lessons in Koran from the accused at the instance of her mother and even after her study in Koran was over, she visited him for revision. During the said period she developed pains in head and abdomen started exhibiting pensive mood which caused anxiety to her family and the mother. The accused who was known for his skills of witch craft was consulted and, because of trust and confidence, treatment was entrusted to him. The accused started treating Sameera by giving her water after chanting certain mantras and during the treatment, that was followed in secrete, an opportunity was exploited by the accused having sexual intercourse with Sameera. Sameera, after some time i.e. after the lust of

the accused become unbearable, disclosed this fact to her maternal uncle Mohd. Iqbal Suleman who was also a trustee of the Mosque and, thereafter a report was lodged. After completing investigation, a charge sheet came to be filed and the accused came to be convicted by the trial court under Section 376 of the Indian Penal Code and sentenced him to suffer R.I. for seven years.

3. The trial Court based conviction on the evidence of Sameera.

. Sameera - the victim prosecutrix was examined as P.W.1. She has stated that in May 99 she had pain in head and stomach and at that time she was knowing the accused as she used to go to him to read Kuran from childhood every day morning around 8 '0' clock and return after two hours. She knew that accused was practicing black magics. Therefore, when she had pain, she asked him to prescribe some medicine and she was told by the accused to come on next Sunday. Accordingly she went to his house. There was nobody in his house. He gave her water in glass and uttered something and asked her to drink the

water. She drunk that water. She started feeling giddy and thereafter she became unconscious. When she woke up she found that she was fully naked. When she asked for explanation after regaining consciousness, the accused told her that her elder mother had done some black magic upon her and, therefore, he had to undress her. He gave threats to her not to disclose any of these things to anyone-else and, if she discloses, she would die. She got frightened. (On the date of evidence Sameera has given his age as 20 years.). Thereafter she has given details as to how by giving threats the accused had sexual intercourse with her continuous for about one and half years, and how she was tortured. She also stated that if she stopped going to him, he used to go forcibly to her house and used to have sexual intercourse with her when there was nobody in her house. When this continued up to 12/13 August 2000, she narrated the incident to her maternal uncle and then she lodged a complaint to the police.

. Sameera was cross examined at length. In the cross examination she has stated that accused had first sexual intercourse with her about one

and half years before the complaint. There is absolutely nothing in the cross examination to create suspicion about the integrity or character of this witness Sameera. Suggestions were given to the witness that she has never visited the house of the accused after her study in Koran was over and the accused had not practiced any magic through water. But all these suggestions have been denied. There is absolutely nothing in the cross examination to discredit the witness. There is no motive to falsely implicate the accused who was Imam of the Masjid and holding respectable and honourable position. The witness has proved her FIR. There are no material contradictions, omissions or exaggerations.

4. The next witness is P.W.4 Arifa Ismile Bot - the mother of the victim. She has stated that on 12th August 2000, when she came home early, she found that Sameera was weeping. When she questioned, Sameera narrated to her that the accused was having illicit intercourse with her since one and half years and she also told about the threats given by the accused. Then this witness narrated this incident to her brother. Panchayat was called on the same day in the

Mosque. It was suggested to the accused to compromise the matter. But he was not willing to do so. Therefore, complaint was lodged to the police. This witness was also cross examined. But nothing fruitful was brought on record. It was tried to show that study of Koran was completed one and half years before and Sameera had no reasons to go to the house of accused again and again. But that is the only suggestion not creating any doubt or suspicion about the evidence of this witness. Some suggestions about Sameera fall in love of Dalvi were also given, but they are not concerned with the conduct and behaviour of the accused. The evidence of this witness has gone practically unchallenged regarding the narration of sexual intercourse upon Sameera by the accused.

5. The next witness is P.W.5 - Mehmood Adam Dalvi. He has stated that he was knowing Sameera and the accused and on 12th August 2000 he had been to their house. Sameera, Ekbal and Sameera's mother were there. The atmosphere was grim. When asked, Sameera narrated about sexual intercourse assaulted by the accused upon her through and the manner in which she was subjected

to fulfilment of desire of the accused i.e. through giving chanted water. The cross examination of this witness has not brought anything on record to create a doubt or suspicion about the evidence of this witness. He was contradicting with portions A, B, and C. But those contradictions are minor viz. with reference to his coming to know about the incident.

6. The next witness of the prosecution is P.W.6 Sayyed Abdul Hamid Mulla. This witness is important for the prosecution because he was knowing the accused and Sameera. On 12th August 2000 Ekbal came to him and told that accused had abused Sameera. Then he was called there and the accused was also called. Thereafter they approached the religious leader Musamiyya in that connection. The accused was taken before the religious leader on that day itself. This witness appraised the religious leader on the facts . The accused surrendered before the Imam, held his feet, bow his head on the feet and confessed that he had committed the mistake and asked for forgiven. Thereafter, Musamiyya ruled out that the accused was not entitled for Namaz

since there was a spot on his character. This witness was also cross examined. But his cross examination has brought more details on record. He has stated as to how Ekbal contacted him and in more what was narrated to him viz. the manner in which the accused influenced Sameera and had sexual intercourse with her by serving water. This witness is the Head Trustee and all other trustees were also there in this meeting. He was questioned as to whether any writing was effected about the talk. He has denied that minutes books in the Mosque is maintained in connection with servants and other matters and he did not feel like to record such a serious matter in the minutes book.

. I do not find any illegality committed by this witness because record of the Masjid is an important one and obviously and naturally such a matter cannot be recorded there. This witness P.W.6 also questioned about the meeting with the Dharmaguru. In Cross examination he has stated that the accused thereafter himself left the job after Maulana sounded the wording.

7. The next witness is PW 7 - PI Bhagwan R. Gosavi who had investigated the matter and prepared panchanama etc.

8. It will be clear from the aforesaid evidence that the witnesses are consistent in their evidence including the prosecutrix Sameera. They support and corroborate her testimony and most important thing is that all the witnesses have shown courage to speak against their own Imam about such heinous act of the accused and they have no motive to falsely implicate the accused. Therefore, this is a case where the trial Court was fully justified in convicting the accused. I do not find that any interference is required. Hence appeal is dismissed.

[D.G.DESHPANDE]

23.08.2004

JUDGE.